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PATENTREMARKS

Applicants have thoroughly considered the Examiner's remarks in the August 8, 2005 Office action and presents claims 14-26 and 50-62 for further examination. Claims 14 and 18 have been amended by this Amendment A. Applicants have withdrawn claims 1-13 (Group I) from consideration, and have canceled claims 27-39 (Group III) and claims 40-49 and 63-75 (Group IV), without prejudice to their patentability, and expressly reserve the right to file a divisional application directed to these claims.

Applicants provisionally elect claims 14-26 and 50-62 (Group II) for examination, but respectfully request reconsideration of the restriction requirement and, in particular, of the reason stated in the Office action for the restriction requirement between Groups I and II.

The Office asserts that claims 1-13 (Group I) and claims 14-26 and 50-62 (Group II) are directed to distinct inventions. More specifically, the Office states that "[i]nventions I and II are related as combination and subcombination and are distinct because the combination does not require the particular of the subcombination as claimed because the details of the subcombination are not set forth in the combination." (See Office action at page 3). Applicants respectfully disagree.

Independent claim 1 recites, in part, a multi-level system for management of a railway system and its operational components that includes "a first processor associated with a railroad infrastructure level configured to control an operation of a railroad infrastructure operating within the railroad infrastructure level," and "a second processor associated with a railroad track network level configured to control an operation of a railroad track network within the railroad track network level, said railroad infrastructure level containing one or more railroad track network levels...." Amended claim 14 recites, in part, a multi-level system for management of a railway system and its operational components that includes "a first level configured to optimize an operation within the first level, said first level including first level operational parameters defining changes in operational characteristics and data of the first level," and "a second level configured to optimize an operation within the second level, said second level including

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second level operational parameters defining changes in the operational characteristic and data of the second level...." Similarly amended independent claim 50 recites a multi-level system for management of a railway system and its operational components that includes, in part, "a first level including first level operational parameters defining changes in operational characteristics and data of the first level," and "a second level including second level operational parameters configured to optimize an operation within the second level and wherein the second level." Apparently the Examiner has determined the "controlling a railroad network" is distinct from controlling levels of the railway system. However, as described in the present application, the multi-level nature of a railway system comprises from the highest level to the lowest level: a railroad infrastructure level 100, a track network level 200, a train level 300, a consist level 400 and a locomotive level 500. (See application page 5, paragraph 36 and FIG. 1). Thus, as described and claimed in the present application, the railway system claimed in Group II includes the railroad track network level claimed in Group I.

Moreover, the claims of Groups I and II both relate to a multi-level system for management of a railway system and its operational components. Applicants respectfully ask the Examiner to consider that even if he indeed believes that the inventions are separately usable, does he really believe such inventions are materially different from a search perspective? Applicants respectfully submit that for purposes of issuing a restriction requirement any such inventions cannot fairly be said to be materially different.

Applicants also ask the Examiner to consider the relative burdens on himself and the Applicants. In order for a reliable search to be conducted for either group of claims, both subclasses will have to be searched. Accordingly, maintaining the Group I and II claims in the application should not add more than a minimal burden. Further, Applicants point out that removing the restriction between Groups I and II would reduce an additional burden by including only 38 total claims. In this regard, the Examiner is asked to consider M.P.E.P. § 803:

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*"If the search and examination can be made without serious burden, the examiner must examine it on the merits, even if it includes claims to distinct or independent inventions."*

(emphasis added)

Applicants respectfully submit that the burden of examining the additional claims having an overlapping search field cannot fairly be said to be "serious."

For these reasons, applicants believe the restriction requirement between Group I and II is improper and should be withdrawn. Nevertheless, applicants provisionally elect Group II for examination.

In addition, since applicants have provisionally elected Group II for examination, applicants further elect Species D (operational parameters are actual) within Species B (operational parameters is indicative of the rate of change in one condition with respect to another). However, applicants submit that amended claims 14 and 50 are generic in that they both now read on an embodiment where the operational parameter is indicative rate of change with respect to time (Species A) and an embodiment where operational parameter is indicative of the rate of change in one condition with respect to another (Species B). In particular, amended claim 14 recites, in part, "first level operational parameters defining *changes in operational characteristics and data of the first level over a period of time,*" and second level operational parameters defining changes in the operational characteristic and data of the second level over a period of time." As such, applicants submit that upon allowance of claims 14 and 50 all claims within Species A and B are allowable. At least claims 24 and 60 read on Species D. In view of the above, the restriction and election requirements are traversed.

Applicants do not believe that the cancellation of claims 27-39, 40-49 and 63-75 requires correction of inventorship under 37 C.F.R. 1.48(b).

Applicants respectfully request examination and allowance of the elected claims.

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The Commissioner is hereby authorized to charge any deficiency or overpayment of any required fee during the entire pendency of this application to Deposit Account No. 07-0846.

Respectfully submitted,



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